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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/470,537	12/22/1999	BRANDON A. GROOTERS	98-0722	6274

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GATEWAY, INC.
14303 GATEWAY PLACE
ATTENTION: MARK S. WALKER (MAIL DROP SD-21)
POWAY, CA 92064

EXAMINER	
YENKE, BRIAN P	
ART UNIT	PAPER NUMBER
2614	14

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/470,537	GROOTERS, BRANDON A.	
	Examiner	Art Unit	
	BRIAN P. YENKE	2614	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED on 04 June 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-35*.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☒ Other: *PTO-892 is attached.*

Continuation of 5. does NOT place the application in condition for allowance because: The applicant states that Darbee fails to disclose, teach or suggest determining whether the data is in the second information handling system (the remote control) and further does not teach, suggest requesting data from a first information handling system after the second information handling system (e.g. the remote control) has determined that the data is not available in the second information handling system as claimed in the present invention. The examiner disagrees Darbee specifically discloses a remote control system which receives via a selective download (col 3, line 32-34) advertising and programming data which is stored in the remote control. The selective download occurs upon the identification of the remote control unit itself, an identification of the user of the remote control or upon some assessment of the viewing habits or preferences of the user. Darbee also discloses that an object of the remote control is to store only a subset of available program guide and/or advertising information. The subset could be specific channels, specific areas of user interest, specific genres of programming or specific times. Darbee also discloses new program guide data being provided to the remote each time that a user activates the remote control or selects a channel for viewing. Darbee also discloses that the software application running on the remote obtains and causes to be stored in memory data indicative of the viewing habits of the viewer. Also, Darbee discloses transmitting the the stored program/content selection history, address and user identification to a set-top box or provider/host system, which provides the remote a tailored/filtered data corresponding to the remote transmitted data. Thus, once a user identification is entered/established, the remote software application, acknowledges a new user, and also acknowledges that program data/advertising information are not stored in the remote, since the remote only stores subsets of available program guide and/or advertising information for the current user, and thereby transmits to set-top box/TV/host the new user identification, and subsequently is able to filter/selectively retrieve the information pertaining to the current user. The applicant also states if a new user were to utilize a remote and the information required was located in the remote, the remote would not need to access the set-top box as is required in Darbee. Since this limitation was not claimed the examiner will not address the limitation. Although, it should be noted, the applicant does acknowledge that Darbee does access information whether the information is in/not in the remote, again supporting the examiners position with applicant's first arguments. The applicant also states for the sake of argument that a second identified user in Darbee required the same information in the remote control as a first previously identified user, and thus the information was already in the remote, the Darbee reference would still try to obtain the information from the set-top box regardless of the data stored in the remote. Again, the examiner will not address any limitations that are not claimed. It is noted again, the applicant admits that Darbee does retrieve information from the set-top box, where Darbee retrieves information based on user the remote control unit, the user or upon some assessment of viewing habits or preferences of the user. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The applicant also requests a references supporting the positino that it would have been obvious to utilize a conventional display and the remote device in accordance with the claimed invention. Thus the examiner provides the following references, Smith, US 6,563,547 discloses a PIP system where a user actuates the PIP (Fig 1-3) which is displayed on the screen with the main video signal; Florin et al., US 5,594,509 discloses a PIP system where the guide and video are displayed on the same screen user operable via a remote (Fig 8-25); Yuen et al., US 6,147,715 discloses a combination VCR/Tuner with an EPG display which is controlled via a remote and displayed as shown (Fig 10A-13B) and Rumreich et al., US 6,088,064 discloses a PIP system where a main image and auxiliary image are displayed being controlled via a remote (Fig 2).

JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600